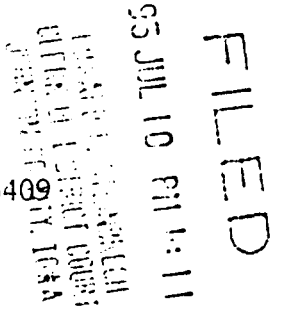
IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY



IOWA CITY ASSOCIATION OF PROFESSIONAL FIREFIGHTERS, IAFF LOCAL 610, Petitioner,	)	No. 56060 & 56409
vs.	)	
PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent,	)	**RULING ON PETITION FOR JUDICIAL REVIEW**
and	)	
CITY OF IOWA CITY, Intervenor.	)	

Oral argument on the Application for Judicial Review came before this Court for hearing on June 16, 1995. Petitioner Firefighters Association (hereinafter referred to as the Association) was represented by attorney MacDonald Smith. The Public Employment Relations Board (hereinafter referred to as PERB) was represented by attorney Jan Berry. The City of Iowa City was represented by First Assistant City Attorney Ann Burnside.

Petitioner seeks Judicial Review of a decision of the Public Employment Relations Board. Two agency decisions are under scrutiny. In both cases, the agency ruled that two separate proposals made by the Iowa City Association of Professional Firefighters during the course of collective bargaining agreement negotiations constituted permissive, rather than mandatory subjects of bargaining within the meaning of the Iowa Public Employment Relations Act (PERA), IOWA CODE Ch. 20. The Association appeals the final agency decision contending that both proposals should be considered mandatory subjects of bargaining and, therefore, suitable topics for impasse procedures.

CONCLUSIONS OF LAW

Chapter 20 of the Iowa Code provides the statutory framework governing the rights of public employees to organize and collectively bargain as well as the rights of public employers with respect to the collective bargaining process. Specifically, section 20.9 governs the scope of negotiable issues under the Act. Section 20.7 outlines the rights of the public employers. PERA, IOWA CODE Ch. 20 (1995)

Review is governed by the provisions of IOWA CODE § 17A.19 (1995). The issue before the court is one of law. Although the court gives weight to the interpretation of the PERB, it is not bound thereby and makes an independent determination of the meaning of the statutes. State v. Public Employment Relations Bd., 508 N.W.2d 668, 670 (Iowa 1993); *citing* Iowa Educ. Ass'n v. PERB, 269 N.W.2d 446, 447 (Iowa 1978). In determining whether a proposal relates to a mandatory or permissive subject of bargaining, the court does not decide whether a particular contract proposal is fair or financially reasonable. . . . The court looks only at the subject matter and not at the relative merits of the proposal at issue. Charles City Ed. Ass'n v. PERB, 291 N.W.2d 663, 666 (Iowa 1980).

Unlike the language of the National Labor Relations Act (NLRA) which broadly encompasses a myriad of mandatory bargaining subjects, the Iowa legislature confined the scope of the Iowa Public Employment Relations Act (PERA) to a specific "laundry list" of mandatory items of negotiations. NLRA § 8(d), 29 U.S.C. § 158(d); PERA, IOWA CODE § 20.9 (1995). The Court determines on a case-by-case basis whether the proposal at issue logically belongs in a § 20.9 mandatory bargaining category, or whether the proposal falls within the broad sphere of management rights reserved to public employers under § 20.7. State v. Public Employment Relations Bd., 508 N.W.2d at 673. This analysis is tempered by the Court's predisposition toward construing the scope of § 20.9 mandatory bargaining subjects restrictively. Id.

Section 20.9 **Scope of negotiations** makes "wages" and other specific topics mandatory subjects for negotiation, and all "other matters mutually agreed upon" permissive subjects for negotiation between a public employer and an employee organization. It provides in pertinent part:

> The public employer and the employee organization shall meet at reasonable times. . . to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reductions, in-service training and other matters mutually agreed upon.

Section 20.7 **Public employer rights**, broadly reserves rights to employers and provides in pertinent part:

> Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:
>
> 1. Direct the work of its public employees.
> 2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency.

It must be recognized that a proponent of almost any proposal, depending on how it is drafted, could possibly point with some comfort to § 20.9 as authority for a contention that the proposal is a mandatory subject for negotiation. Charles City Ed. Ass'n v. PERB, 291 N.W.2d at 667. However, there is clearly a legislative intent to adopt a restrictive and narrow approach to interpreting the subjects listed in § 20.9 when considering whether mandatory bargaining applied to them. Section 9 should properly be viewed as providing exceptions to section 7. Therefore, as with most exceptions, if a subject is not specifically listed, it must be assumed that the intent of the legislature was to exclude it. Id. *citing as authority* Pope, *Analysis of the Iowa Public Employment Relations Act*, 24 DRAKE L. REV. 1, 33-34 (12974); *see also* City of Fort Dodge v. PERB, 275 N.W.2d 393, 397 (Iowa 1979).

Petitioner, the Association is a labor organization and the certified representative for collective bargaining for the firefighters, fire lieutenants and fire captains employed in the City of Iowa City fire department. In negotiations for a successor to the 1993/1994 collective bargaining agreement (cba), Petitioner made the following proposal for inclusion in the contract with the City:

> The normal work day will consist of 24 hours on duty (Commencing at 0700 hours). Active work time within the normal work day shall be from 0700-1600 hours on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays. Each employee shall be granted two (2) fifteen (15) minute rest periods during the period of active work time, in addition to a lunch period. The lunch period shall be from 1130 to 1300 hours. Ready time shall be the hours of the normal work day that do not consist of active work time. This time shall commence at 1600 hours and shall continue through the end of the employee's shift.
>
> Active work time within the normal work day shall be from 0700 to 1130 on Saturdays. Each employee shall be granted one (1) fifteen minute rest period during the period of active work time. Ready time shall be the hours of the normal work day that do not consist of active work time. This time shall start at 1130 hours and will continue through until the end of the employees shift.
>
> Employee shifts that occur on Sundays or recognized holidays shall consist of 24 hours of ready time.
>
> These could include routine station duties, apparatus checks, inspections, training, equipment maintenance, etc.
>
> Ready time shall be considered the hours of the normal work day that do not consist of active work time. During this period, the employee remains on duty, in the appropriate uniform and is ready to respond to emergencies. Duties performed during ready time would include emergency response and other duties necessary to immediately return a fire company to a ready status (ie. reload hose, refill SCBA tanks, refill booster tanks, replace needed equipment, etc.).

The parties agreed that certain portions of the above proposal were mandatory subjects for bargaining. However, the parties remained in dispute regarding the negotiability of the shift division into "active work time" in which routine duties could be assigned, and "ready time" during which the employee may be assigned only limited duties. The Association argued that the proposals should be classified as "hours", a mandatory bargaining subject under IOWA CODE § 20.9. The City maintained that this was a permissive subject because it affected, under IOWA

CODE § 20.7, management's exclusive retained right to assign and direct employees during the work day.

On October 5, 1994, PERB issued its Final Ruling agreeing with the City and finding that the provisions in the proposal which define or differentiate the type of assignments that may be made during "active work time" and "ready time" within a shift are permissive subjects of bargaining because they restrict management's right to assign. The Association seeks Judicial Review of this PERB Ruling on Negotiability. The Court shall refer to this first proposal as the "Hours" proposal.

The "hours of work" subject of bargaining has consistently been held by the Board to be the number of hours worked, starting and quitting times, and breaks. Dubuque Professl Firefighters Ass'n v. City of Dubuque, 86 PERB 3203, 5; *see also* Sergeant Bluff-Luton Comm. Educational Ass'n, 76 PERB 715; *see also* North Scott Comm. School Dist., 77 PERB 931. In the present case, the "Hours" proposal sought by the Petitioner would neither increase the total on duty hours, nor would it alter breaks, or starting and quitting times of the firefighter's twenty four hour shift. Rather, the proposal attempts to allocate times during the entire shift when the employer may or may not assign the employee certain tasks. For example, the proposal suggests that during ready time the employer may assign the employee only limited duties related to emergency response. Whereas, during active work time the employer would be free to assign various other duties. The fact remains, however, that firefighters are governed by a 24 hour shift during which they are considered to be on duty. During that entire shift with the limited exception of lunch and break times, the employer retains the right to assign work/duties and designate job content. In other words, it is for the employer to establish, define, and allocate workloads during the firefighter's work day.

To impede the employer's ability to assign duties or to designate what it would like its employees to do during portions of the work day would surely eventually lead to inefficiency and ineffectiveness in the fire department; traits which the City simply cannot permit in its fire service to the public. More important to this analysis, however, is the fact that any interference with the employer's ability to assign would impinge upon the exclusive rights, powers, and duties retained to the public employer under IOWA CODE § 20.7. Further, to adopt an expansive definition of the listed mandatory bargaining topics would defeat the purpose of having a restricted and specific list of mandatory subjects. The Court finds the Association's "Hours" proposal does not fall within the definition of § 20.9 "hours", and therefore is not a mandatory subject of bargaining as contemplated by the legislature. The decision of the Public Employment Relations Board should be affirmed and the Association's "Hours" proposal should be interpreted as a permissive subject of bargaining.

In negotiations for a 1995/1996 collective bargaining agreement and taking into account the earlier decision of PERB regarding the Association's prior proposal, Petitioner made the following proposal for inclusion in the contract with the City:

> The City shall pay a 25% pay premium for "ready" time hours where management elects to exercise its right to assign traditional "active" time work.
>
> "Active" time on Monday through Friday is defined to include all time between 7am and 4pm except for a one hour lunch break determined by management, provided however, that for the fire fighters who actually prepare the meal or clean up, the lunch break is extended to one and one-half hours. The lunch break should normally occur between noon and 1pm, but it may be altered by management to conform to periodic training or work needs. On Saturday and Sunday, "active time" includes all hours from 7am to noon. All other time, including all hours worked on holidays, is defined to be "ready time".
>
> For the purposes of clarity active work time shall be considered when an employee is on duty and subject to assignment of routine duties necessary to operate the Fire Department. These could include routine station duties, apparatus checks, inspections, training, equipment maintenance, etc.
>
> Ready time shall be considered the hours of the normal work day that do not consist of active work time. During this period the employee remains on duty, in the appropriate uniform and is ready to respond to emergencies. Duties performed during ready time would include emergency response and other duties necessary to immediately return a fire company to ready status (ie. reload hose, refill SCBA tanks, refill booster tanks, replace needed equipment, etc.).

The Association argued the proposal was mandatory under § 20.9 categories of wages, or shift differentials, while the City argued it was permissive because it interfered with the employer's § 20.7 right to assign and direct work. On March 8, 1995, PERB issued a Ruling on Negotiability finding that the provisions in the proposal were permissive subjects of bargaining because it interfered with the employer's right to assign and direct work. The Association seeks Judicial Review of this PERB Ruling on Negotiability; the Court shall refer to this second proposal as the "Premium Pay" proposal.

The "wages" subject of bargaining is a mandatory topic under § 20.9 and has been consistently held by the Board and the Iowa Courts to be defined as: pay given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salaries or fees. Charles City Ed. Ass'n v. PERB, 291 N.W 2d at 668. The term "wages" involves a specific sum or price paid by an employer in return for services rendered by an employee. Id. Wages linked to the amount of work performed are considered to be mandatory proposals. Western Iowa Tech. Comm. College, 85 PERB 3033; *citing* Great River AEA 16, 84 PERB 2372 & 2384, Urbandale Comm. School Dist., 77 PERB 880 & 897.

The Court believes the "Premium Pay" proposal relates to "wages" as intended by the legislature in its list of mandatory topics of negotiation under § 20.9. The proposal directly links the amount of wages paid to the amount of work to be performed, especially during "ready time". This appears similar to the widely accepted practice of employers paying their employees time-and-a-half for overtime work. The "Premium Pay" proposal may indirectly have a negligible

effect on the employer's decision to assign certain tasks during certain times because the employer would be responsible for paying the firefighter more if additional duties were assigned, other than those related to emergency response, during the firefighter's "ready time". It is unlike the previous "Hours" proposal (which suggested that the employer was completely restricted from assigning tasks during "ready time") because the employer's right to assign workloads during the work day would not be restricted by this increase in pay. In fact, practically speaking, the employer would still be free to assign whenever, and whatever duties or tasks were deemed necessary. Certainly, firefighters who perform additional and diverse tasks are entitled to be compensated for these services. Therefore, the Court finds PERB's interpretation of the statute to be unreasonable, and construes the second proposal to be within the § 20.9 category of "wages", a mandatory subject of negotiation between the parties.

The Court has decided that the "Hours" proposal is a permissive subject of bargaining because to construe it otherwise would interfere with the public employer's right to assign duties during the work day. Based on this, although the employer is free to assign whatever tasks it deems necessary, the parties are bound to negotiate on the Association's proposal related to "premium pay" because it directly implicates wages, a mandatory subject of negotiation.

RULING

IT IS THEREFORE ORDERED that the October 5, 1994 decision of the Public Employment Relations Board is hereby AFFIRMED; the provisions in the first proposal which define or differentiate the type of assignments that may be made during "active work time" and "ready time" within a shift are permissive subjects of bargaining because they restrict management's right to assign.

IT IS FURTHER ORDERED that the March 8, 1995 decision of the Public Employment Relations Board is hereby OVERRULED; the provisions in the second proposal which relate to premium pay for tasks performed during "ready time" are mandatory subjects of bargaining under the § 20.9 classification of "wages".

FILED
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IOWA DISTRICT COURT
POLK COUNTY, IOWA

Dated this 7th day of July, 1995.
Clerk to Notify.

Thomas M. Horan

THOMAS M. HORAN, JUDGE
SIXTH JUDICIAL DISTRICT OF IOWA

Date: 7.11.95
Mailed To:
M. SMITH
J. BENNY
A. BUNNSION

BY KO
Clerk's Office Personnel Executing
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